IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 5363 of 2006
Date of decision : 12.10.2006.

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Parties Name

Deepak Kohli

..... Petitioner

vs.

Smt. Seema Walia

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Amit Jain, Advocate
for the petitioner.

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S.N. Aggarwal, J.

Seema Walia-respondent had filed a suit for mandatory injunction against the petitioner for vacation of two rooms on the top floor of House No. 9, Sector 15-A, Chandigarh. The said suit was decreed by the learned trial court vide judgment and decree dated 18.1.2005. The appeal was also dismissed and the Regular Second Appeal was also dismissed by this Court on 13.7.2006. In the execution proceedings, the petitioner filed objections under Order 21 Rule 29/58 CPC alleging that he was in possession of four rooms, one kitchen and two latrine/bathrooms on the top floor of the house. Hence, he filed an application for appointment of the Local

Commissioner to verify the possession of the petitioner on the top floor of the house in dispute as alleged by him. The said application was dismissed by the learned trial Court vide impugned order dated 29.9.2006.

Hence, the present revision petition.

The submission of the learned counsel for the petitioner was that the decree was only for the two rooms on the top floor, while actually he was in possession of four rooms. Therefore, the appointment of Local Commissioner is essential to identify the rooms which are to be vacated by the petitioner in compliance with the judgment and decree dated 18.1.2005.

This submission has been considered. The judgment mandates the petitioner to vacate two rooms on the top floor and the petitioner is to hand over the vacant possession of these two rooms. There is no need for appointment of Local Commissioner as the warrant of possession will be entrusted to a Court official for handing over the possession. Since the warrant of possession would be for two rooms only, therefore, the Court official will execute the warrants as are received by him.

The Court can take judicial notice that there are only two rooms permissible on the top floor of 10 marla plots and the remaining construction, if any, is illegal.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

12.10.2006.
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